



July 27, 2017

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

**Re: Oral Ex Parte Presentation**, WT Docket No. 10-112, Amendment of Parts 1, 22, 24, 27, 74, 80, 95 and 101 To Establish Uniform License Renewal, Discontinuance of Operation, Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services; Exploring Flexible Use in Mid-Band Spectrum Between 3.7 GHz and 24 GHz, GN Docket No. 17-183.

Dear Ms. Dortch,

On Wednesday, July 26, 2017, Brian Josef of CTIA spoke via telephone with Rachael Bender, wireless legal advisor to Chairman Ajit Pai; Daudeline Meme, wireless legal advisor to Commissioner Mignon Clyburn; Erin McGrath, wireless legal advisor to Commissioner Michael O'Rielly; and Roger Noel and Kathy Harris of the Wireless Telecommunications Bureau.

During the conversation with Ms. McGrath, CTIA expressed its strong support for the Commission's draft Notice of Inquiry examining potential mobile, terrestrial use of spectrum between 3.7 GHz–24 GHz.<sup>1</sup> CTIA commended the NOI's recognition of the need to bring additional mid-band spectrum to market – complementing recent Commission efforts addressing low- and high-band spectrum – and its specific focus on the 3.7-4.2 GHz and 6 GHz bands. CTIA also welcomed the item's invitation for comment on additional spectrum bands up to 24 GHz, thereby enabling the Commission to lay a strong foundation for future spectrum proceedings.

In the conversations with Commission Staff, CTIA also commended the Commission for taking action to harmonize the varying license renewal, discontinuance

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<sup>1</sup> Notice of Inquiry, GN Docket No. 17-183, FCC-CIRC1708-04 (July 13, 2017) ("NOI").



and other rules that currently apply to different wireless services.<sup>2</sup> A consistent regulatory framework will promote compliance and competition among wireless licensees. CTIA noted, however, that certain language in the draft Order and new rules would impose unwarranted burdens on its members and FCC staff, complicate and delay the renewal process, and impose obligations retroactively. CTIA thus urged the Commission to modify the draft Order and rules in several respects.

**1. The renewal safe harbor certification should be available to licensees that experience temporary decreases or discontinuances in coverage.** The new safe harbor for geographic license renewals is available only if the licensee provides coverage at or above the level set by buildout requirements for its service “through the end of the license term.” (Draft Rule 1.949(d)(2)). The draft Order states that for renewals after the initial term, to qualify for the safe harbor, the licensee must show that “over the license term at issue, it continuously provided service to the public ... at or above the level required to meet” any final construction requirement. (Draft Order at ¶ 10). Moreover, the safe harbor is also unavailable for “a licensee that discontinued service for an extended period of time during the license term (but did not permanently discontinue service).” (Id. ¶ 27).

These restrictions on the safe harbor are unnecessarily severe. When a wireless provider upgrades service (e.g., re-farms a spectrum band to a next-generation air interface technology) at a number of sites, it may reduce overall coverage below the level required by buildout requirements, or briefly turn down service on that spectrum, for a limited period. Licensees need such flexibility to best serve their customers, and the Commission should encourage such network upgrades, not unnecessarily complicate or deter them, by depriving licensees access to the safe harbor process at renewal. Further, licensees may experience temporary interruptions in service due to natural disasters, power outages or other network issues. Again, these events should not disqualify a licensee from using the safe harbor. But by eliminating the safe harbor options and forcing more licensees to make the onerous “renewal showing,” the draft Order would unnecessarily add burdens both to licensees and Commission staff, who would need to review and assess the large amount of historical information required by the renewal showing.

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<sup>2</sup> *Second Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 10-112, FCC-CIRC1708-05 (July 13, 2017) (“Order”).



The Commission should thus modify the language of draft Rule 1.949(d)(2) and the draft Order to clarify that a licensee may use the safe harbor as long as there was no permanent discontinuance and the licensee is currently meeting at least the level of coverage required for its service.

**2. The regulatory compliance certification is overbroad.** Draft Rule 1.949(f) and the draft Order (at ¶ 17) require a renewal applicant to certify that it has substantially complied with FCC rules and is not the subject of FCC orders finding a violation of the Communications Act of 1934 ("the Act") or any FCC rule or policy and also is not the subject of any pending proceedings. The draft certification, however, is not limited to the license being renewed, nor is it clear that it applies only to the applicant and not to parents or affiliates. A renewal applicant may hold multiple licenses in many services and/or geographic areas that are wholly unrelated to the license at renewal. Further, a licensee may have a parent or numerous affiliates which themselves hold distinct licenses. The certification also would improperly encompass all "pending" proceedings, even where the Commission has not found the licensee to have violated any rules, as well as proceedings addressed through "consent decrees," where compliance measures and other safeguards have resolved inquiries. The certification is thus overly broad.

The Commission should narrow the certification to avoid these problems. It should clarify that the certification pertains only to adjudicated violations of the Act or FCC rules (excluding policies) and only to the actual applicant's conduct with regard to the specific license being renewed.

**3. The new rules should apply only to the portion of a licensee's current term which occurs after the rules take effect and to all subsequent license terms.** The draft Rules would be unlawfully retroactive, because the draft Order provides that once they take effect, licensees would be required to make the required certifications for the entire license term. (Order at ¶¶ 37, 63). Given that most license terms are for 10 years or longer, licensees will be obligated to certify compliance for a period of time that occurred *before* the new obligations were known. For example, if the rules take effect October 1, 2017, a licensee with a renewal application due the next day would need to certify for the entire term, dating back to October 2007. In these situations the rules would impose legal obligations on licensees based on events or conduct that occurred before those obligations were created and imposed, and for which there may have been no ability to track all obligations due to lack of formal notice.



The Commission can remove the retroactive impact of the new rules by clarifying that, once they are published and take effect, they apply only to the period of a licensee's current license term that occurs after that effective date, and to all subsequent license terms. This will ensure that all licensees begin complying with the new rules upon their effective date, achieving the Commission's objective, while avoiding unlawful retroactivity.

**4. The partitioning and disaggregation rule should be clarified to confirm that parties can share responsibility for meeting performance requirements.** The draft Order (at ¶ 79 n. 190) and draft Rule 1.950(g) allow parties to a partitioning or disaggregation arrangement to agree to share responsibility for coverage requirements, but then state that if "one or both parties" do not meet those requirements, both will be subject to any penalties. The Order and Rule should be clarified to state that the performance requirement is a "shared" responsibility, and in the event the parties fail to meet their shared performance requirements, both licensees will be subject to any penalties.

Pursuant to Section 1.1206 of the Commission's rules, CTIA is filing a copy of this letter in ECFS. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Brian M. Josef

Assistant Vice President – Regulatory Affairs  
CTIA®

cc: Meeting Attendees